IN THE PARSI CHIEF MATRIMONIAL COURT AT BOMBAY

O. O. C. J.

PARSI SUIT NO.33 OF 2003

Daneshmand Homi Unwalla. ...Plaintiff No.1

Vs.

Kamal Danesh Unwalla. ...Plaintiff No.2

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Mrs.A.S.Khushrushahi for Plaintiff No.1

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CORAM : DR.D.Y.CHANDRACHUD, J.

(Aided by a forewoman, two Gentlemen and one Lady)

March 4, 2005.

ORAL JUDGMENT:

1. This is a suit for divorce by mutual consent under Section 32B of the Parsi Marriage and Divorce Act, 1936. Parties were married on 26th February 2000 in accordance with the rites and ceremonies of the Parsi Zoroastrian religion. The Second Plaintiff is an Airhostess working in Gulf Airlines and is stationed at Bahrain. She is presently residing at Abu Dhabi. The First Plaintiff is a deep-sea Diver. It has been stated that since parties were not residing at the same place and the

First Plaintiff went to Bahrain on 3 or 4 occasions to reside with the Second Plaintiff, they started drifting apart and eventually there was an irretrievable break down of the marriage. During the Parsi New Year of 2002 when the Second Plaintiff was in Mumbai, parties realised that the marriage has failed and it was in their best interest to resolve their problems by a suit for divorce by mutual consent. Accordingly, this suit has been instituted.

2. The Second Plaintiff has stepped into the witness box to depose in support of the suit for divorce by mutual consent. The First Plaintiff is presently undergoing Training as a Life Saving Technician at Kutch, in the State of Gujarat. An affidavit in lieu of his Examination-in-Chief dated 5th March 2004 has been filed. The First Plaintiff has also in his affidavit supported the suit for divorce by mutual consent.

3. The following issues were framed in the suit:

1. Whether the Plaintiffs were lawfully married on 26th February 2000 at Bombay in accordance with the rites and

ceremonies of the Parsi Zoroastrian religion and customs?

2. Whether the Plaintiffs have been residing separately ever since September 2002 for a period of more than one year?

3. Whether there is any force, fraud or coercion in the institution of the suit?

4. Whether there is any unnecessary or improper delay in the institution of the suit?

5. Whether there is any legal ground why the reliefs claimed for should not be granted?

4. Four delegates have been present at the trial which constitute a quorum under the provisions of Section 44 of the Act.

5. The delegates have advised the Court that the first and second issues are answered in the affirmative while the third, fourth and fifth issues are answered in the negative.

6. Though a view has been taken by F.I.Rebello, J. in **Cyrus Kersie Vandrevala and Kareena C.Vandrevala** (Suit No.15 of 2004, decided on 18th October 2004), that it is not necessary for the Court to consult the delegates in a suit under Section 32B for divorce by mutual consent the Court has been informed that a challenge is pending to the aforesaid order. In order to obviate any difficulty and by way of abundant caution, I have taken the view of the delegates so that the suit for divorce by mutual consent can be disposed of.

7. On the basis of the evidence, I am of the view that there is no reason why the suit should not be decreed as prayed. Parties have lived separately for more than one year and there is an irretrievable break down of the marriage. No reconciliation is now possible between them. The marriage was solemnised under the provisions of the Act and the averments in the plaint are found to be true. I am satisfied that the consent of either party was not obtained by fraud or coercion. Consent terms have been signed by the parties and the Court is informed by Learned Counsel that the mutual obligations under the Consent Terms have been duly implemented by the parties.

8. In the circumstances, the suit shall stand decreed in terms of prayer clauses (a) and (b). There shall be no order as to costs.

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